

Senate Bill 73

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows agricultural producer in danger of foreclosure on agricultural property to request mediation if producer owes more than \$50,000 to one or more creditors.

A BILL FOR AN ACT

1
2 Relating to mediation; creating new provisions; and amending ORS 36.256.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 36.256 is amended to read:

5 36.256. (1) An agricultural producer who is in danger of foreclosure on agricultural property
6 under ORS 86.010 to 86.990, 87.001 to 87.920 or 88.710 to 88.740 or a creditor, before or after be-
7 ginning foreclosure proceedings, may request mediation of the agricultural producer's indebtedness
8 by filing a request with the mediation service on a form provided by the service[. *However, an ag-*
9 *ricultural producer or creditor may not request mediation under this section unless*] **if**, at the time the
10 request is made, the agricultural producer owes more than [*\$100,000*] **\$50,000** to one or more credi-
11 tors, and the debt is either:

12 (a) Secured by one or more mortgages or trust deeds on the agricultural producer's agricultural
13 property;

14 (b) Evidenced by a real estate contract covering the agricultural producer's agricultural prop-
15 erty; or

16 (c) The subject of one or more statutory liens that have attached to the agricultural producer's
17 agricultural property.

18 (2) In filing a mediation request, the agricultural producer shall provide:

19 (a) The name and address of each creditor;

20 (b) The amount claimed by each creditor;

21 (c) The amount of the periodic installment payments made to each creditor;

22 (d) Any financial statements and projected cash flow statements, including those related to any
23 nonagricultural activities;

24 (e) The name of the person authorized to enter into a binding mediation agreement; and

25 (f) Any additional information the mediation service may require.

26 (3) In filing a mediation request, a creditor shall provide:

27 (a) Statements regarding the status of the agricultural producer's loan performance;

28 (b) The name and title of the representative of the creditor authorized to enter into a binding
29 mediation agreement; and

30 (c) Any additional information the mediation service may require.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (4) [Nothing in] ORS 36.250 to 36.270 [shall be construed to] **do not** require an agricultural pro-
 2 ducer or creditor to engage or continue in the mediation of any dispute or controversy. Mediation
 3 under ORS 36.250 to 36.270 [shall be] **is** entirely voluntary for all persons who are parties to the
 4 dispute or controversy, and if such persons agree to engage in mediation, any one of the persons
 5 may at any time withdraw from mediation.

6 (5) If an agricultural producer or a creditor files a mediation request with the mediation service,
 7 the service shall within 10 days after receipt of the request give written notice of the request to any
 8 other person who is identified in the request for mediation as parties to the dispute or controversy.
 9 The notice [shall] **must**:

10 (a) Be accompanied by a copy of the request for mediation;

11 (b) Generally describe the mediation program created by ORS 36.250 to 36.270;

12 (c) Explain that participation in mediation is voluntary and that the recipient of the notice is
 13 not required to engage in mediation or to continue to mediate if mediation is initiated;

14 (d) Request that the recipient of the notice advise the mediation service in writing and by cer-
 15 tified mail within 10 days as to whether the recipient wishes to engage in mediation; and

16 (e) Explain that if the written advice required under paragraph (d) of this subsection is not re-
 17 ceived by the mediation service within the 10-day period, the mediation request will be considered
 18 denied.

19 (6) If the person who receives the notice of request for mediation under subsection (5) of this
 20 section wishes to engage in mediation, the person shall advise the mediation service in writing
 21 within the 10-day period specified in subsection (5) of this section. The response [shall] **must** include
 22 the appropriate information that the responding person would have been required to include in a
 23 request for mediation under subsection (2) or (3) of this section.

24 (7) If the person who receives notice of request for mediation under subsection (5) of this section
 25 does not wish to engage in mediation, the person may, but [shall not be] **is not** required to, so advise
 26 the mediation service.

27 (8) If the person who receives the notice of request for mediation under subsection (5) of this
 28 section does not advise the mediation service in writing within the 10-day period specified in the
 29 notice described in subsection (5) of this section that the person desires to mediate, the request for
 30 mediation shall be considered denied.

31 (9) The submission of a request for mediation by an agricultural producer or a creditor [shall]
 32 **does** not operate to stay, impede or delay in any manner whatsoever the commencement, prose-
 33 cution or defense of any action or proceeding by any person.

34 (10) If requested by the agricultural producer, the coordinator shall provide the services of a
 35 financial analyst to assist the agricultural producer in preparation of financial data for the first
 36 mediation session.

37 (11) ORS 36.250 to 36.270 [are not applicable] **do not apply** to obligations or foreclosure pro-
 38 ceedings with respect to which the creditor is a financial institution, as defined in ORS 706.008.

39 **SECTION 2. The amendments to ORS 36.256 by section 1 of this 2013 Act apply to re-**
 40 **quests for mediation filed with the mediation service on or after the effective date of this**
 41 **2013 Act.**